

## Office of the Secretary, Interior

## § 36.9

the TUS and so notify the applicant in writing.

(2) Each appropriate Federal agency in making its decision shall consider and make detailed findings supported by substantial evidence as to the portion of the TUS, within that agency's jurisdiction, with respect to:

(i) The need for and economic feasibility of the TUS;

(ii) Alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to routing the system through or within an area and, if not, whether there are alternate routes or modes which would result in fewer or less severe adverse impacts upon the area;

(iii) The feasibility and impacts of including different TUSs in the same area;

(iv) Short and long term social, economic and environmental impacts of national, State or local significance, including impacts on fish and wildlife and their habitat and on rural, traditional lifestyles;

(v) The impacts, if any, on the national security interests of the United States, that may result from approval or denial of the application for the TUS;

(vi) Any impacts that would affect the purposes for which the Federal unit or area concerned was established;

(vii) Measures which should be instituted to avoid or minimize negative impacts;

(viii) The short and long term public values which may be adversely affected by approval of the TUS versus the short and long term public benefits which may accrue from such approval; and

(ix) Impacts, if any, on subsistence uses.

(3) To the extent the appropriate Federal agencies agree, the decisions may be developed jointly, singularly or in some combination thereof.

(4) If an appropriate Federal agency disapproves any portion of the TUS, the application in its entirety is disapproved and the applicant may file an administrative appeal pursuant to section 1106(a) of ANILCA.

(b) When an area involved is within the National Wilderness Preservation

System or an appropriate Federal agency has no applicable law with respect to granting all or any part of a TUS application:

(1) Within four months of the date of publication of the notice of the availability of the final EIS or FONSI, each appropriate Federal agency shall determine whether to tentatively approve or disapprove each right-of-way permit within its jurisdiction that applies with respect to the TUS and the Secretary of the Interior shall make notification pursuant to section 1106(b) of ANILCA.

(i) The Federal agency having jurisdiction over a portion of a TUS for which there is no applicable law shall recommend approval of that portion of the TUS if it is determined that:

(A) Such system would be compatible with the purposes for which the area was established; and

(B) There is no economically feasible and prudent alternate route for the system.

(ii) If there is applicable law for a portion of the TUS which is outside the National Wilderness Preservation System, the applicable law shall be applied in making the determination to approve or disapprove that portion of the TUS.

(2) The notification shall be accompanied by a statement of the reasons and findings supporting each appropriate Federal agency's position. The findings shall include, but not be limited to, the findings required in paragraph (a)(2) of this section. The notification shall also be accompanied by the final EIS, the EA or statement that a categorical exclusion applies and any comments of the public and other Federal agencies.

### § 36.8 Administrative appeals.

(a) If any appropriate Federal agency disapproves a TUS application pursuant to § 36.7(a), the applicant may appeal the denial pursuant to section 1106(a) of ANILCA.

(b) There is no administrative appeal for a denial issued under the provisions of § 36.7(b).

### § 36.9 Issuing permit.

(a) Once an application is approved under the provisions of § 36.7(a), a

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right-of-way permit will be issued by the appropriate Federal agency or agencies, according to that agency's authorizing statutes and regulations or, if approved pursuant to the provisions of § 36.7(b), according to the provisions of title V of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701) or other applicable law. The permit shall not be issued until all fees and other charges have been paid in accordance with applicable law.

(b) All TUS right-of-way permits shall include, but not be limited to, the following terms and conditions:

(1) Requirements to ensure that to the maximum extent feasible, the right-of-way is used in a manner compatible with the purposes for which the affected area was established or is managed;

(2) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land;

(3) Requirements to ensure that activities in connection with the right-of-way will not violate applicable air and water quality standards and related facility siting standards established pursuant to law;

(4) Requirements, including the minimum necessary width, designed to control or prevent:

(i) Damage to the environment (including damage to fish and wildlife habitat);

(ii) Damage to public or private property; and

(iii) Hazards to public health and safety.

(5) Requirements to protect the interests of individuals living in the general area of the right-of-way permit who rely on the fish, wildlife and biotic resources of the area for subsistence purposes; and

(6) Requirements to employ measures to avoid or minimize adverse environmental, social or economic impacts.

(c) Any TUS approved pursuant to this part which occupies, uses or traverses any area within the boundaries of a unit of the National Wild and Scenic Rivers System shall be subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such river are not interfered with or impeded and that

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the TUS is located and constructed in an environmentally sound manner.

(d) In the case of a pipeline described in section 28(a) of the Mineral Leasing Act of 1920, a right-of-way permit issued pursuant to this part shall be issued in the same manner as a right-of-way is granted under section 28, and the provisions of subsections (c) through (j), (1) through (q), and (u) through (y) of section 28 shall apply to right-of-way permits issued pursuant to this part.

### § 36.10 Access to inholdings.

(a) This section sets forth the procedures to provide adequate and feasible access to inholdings within areas in accordance with section 1110(b) of ANILCA. As used in this section, the term:

(1) *Adequate and feasible access* means a route and method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's non-federal land or occupancy interest.

(2) *Area* also includes public lands administered by the BLM designated as wilderness study areas.

(3) *Effectively surrounded by* means that physical barriers prevent adequate and feasible access to State or private lands or valid interests in lands except across an area(s). Physical barriers include but are not limited to rugged mountain terrain, extensive marsh areas, shallow water depths and the presence of ice for large periods of the year.

(4) *Inholding* means State-owned or privately owned land, including subsurface rights of such owners underlying public lands or a valid mining claim or other valid occupancy that is within or is effectively surrounded by one or more areas.

(b) It is the purpose of this section to ensure adequate and feasible access across areas for any person who has a valid inholding. A right-of-way permit for access to an inholding pursuant to this section is required only when this part does not provide for adequate and feasible access without a right-of-way permit.